

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: DOMESTIC DRYWALL  
ANTITRUST LITIGATION**

**MDL No. 2437  
13-MD-2437**

**THIS DOCUMENT RELATES TO:  
  
DIRECT PURCHASER ACTIONS**

**MEMORANDUM IN SUPPORT OF DIRECT PURCHASER PLAINTIFFS' MOTION  
FOR AN ORDER AUTHORIZING DISPOSITION OF THE RESERVE FUND**

In its Order Approving Plan of Distribution (ECF No. 765) and its Order Approving Distribution of the Remaining Settlement Funds (ECF No. 887) (the “Distribution Order”), the Court, among other things, approved Direct Purchaser Plaintiffs’ (“DPPs”) proposed Plan of Distribution and authorized the distribution of approximately 90% of the Net Settlement Fund (the “Initial Distribution”). Pursuant to those Orders, at the direction of Class Counsel, on February 7, 2020, Kurtzman Carson Consultants (“KCC”), the claims administrator, mailed checks to 3,089 Authorized Claimants. *See* Affidavit of Derek Smith (the “Smith Affidavit”) (attached as Exhibit 1), ¶ 3. Now, pursuant to Paragraph 7 of the Distribution Order, Class Counsel hereby moves the Court for an order authorizing the distribution of the remainder of the Net Settlement Fund (“Second Distribution”) to (1) Authorized Claimants that cashed the checks they received as part of the Initial Distribution, except for those that received the full \$250 payout to which they were entitled (“Authorized Reserve Fund Claimants”), and (2) twelve claimants with claims that were not included in the Initial Distribution, but which were able to demonstrate compelling circumstances to qualify for the acceptance of their claims under Paragraph 6 of the Distribution

Order (“Authorized Additional Claimants”) (and, together with Authorized Reserve Fund Claimants, “Authorized Second Distribution Claimants”).

After the Court’s Initial Distribution Order, as ordered, KCC mailed 3,089 checks (worth \$109,779,623.70) to Authorized Claimants. *See* Ex. 1, ¶ 3. The Initial Distribution included (a) 1,562 Authorized Claimants that received approximately 90% of their estimated distribution, and (b) 1,527 Authorized Claimants that received a one-time \$250 payment. *See Id.* Nearly all Authorized Claimants (96.63%) cashed their check, including 1,523 out of 1,562 Authorized Claimants that received approximately 90% of their estimated distribution. *See Id.* As a result, 1,523 Authorized Reserve Fund Claimants are now eligible for the Second Distribution called for in Paragraph 6 of the Distribution Order. The \$251,121.63 of the \$109,779,623.70 distributed to Authorized Claimants as part of the Initial Distribution that remains as a result of uncashed checks will be added to the amount to be distributed in this Second Distribution. *Id.*

In addition to the 1,523 Authorized Reserve Fund Claimants, there are also twelve claimants that were not included in the initial distribution, but through no fault of their own. Therefore, Class Counsel and KCC believe there are “compelling circumstances justifying the late acceptance of” these claims pursuant to Paragraph 6 of the Initial Distribution Order, *see id.* at ¶ 4. The additional twelve claimants include the claim submitted by L&W Supply Corporation for purchases made by NexGen Building Supply as authorized by the Court on July 7, 2020 (ECF No. 962).

KCC therefore recommends (1) the approval of 1,523 Authorized Reserve Fund claims for Authorized Claimants that cashed their checks as part of the Initial Distribution, (2) the approval of twelve authorized additional claims, and (3) that the approved reserve fund claims be paid in the estimated amounts set out in Ex. 1. *See* Ex. 1, ¶ 5 and Exhibits A (all Authorized Second

Distribution Claimants), B (Authorized Reserve Fund Claimants only) and C (Authorized Late Claimants only). Based on Class Counsel's judgment and experience, and on KCC's recommendation, Class Counsel request that the Court authorize disbursement of the remaining \$13,358,318.52 from the Net Settlement Fund (including \$251,121.63 from uncashed checks) to the 1,535 eligible claimants, *see* Ex. 1, ¶ 5, in the estimated amounts set out in Ex. 1 and its Exhibits B and C.<sup>1</sup>

In the event that there is any money left over after this proposed Second Distribution, from uncashed checks or otherwise, Class Counsel will move the Court for further authorization to distribute those remaining funds to an appropriate *cy pres* recipient.

### **CONCLUSION**

For the above reasons, Class Counsel request that the Court authorize the disbursement of \$13,358,318.52 (the remainder of the Net Settlement Fund), in the recommended estimated payment amounts, to the 1,535 approved claimants.

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<sup>1</sup> Exhibit B includes the *pro rata* calculation to determine the final proposed distribution amount for each Authorized Reserve Fund Claimant after adding the funds resulting from uncashed checks to the approximately 10% reserve fund, while subtracting the entire *pro rata* share from the initial Net Settlement Fund to which each Authorized Additional Claimant would have been entitled had its claim been timely filed. Authorized Additional Claimants will receive 100% of that *pro rata* share as part of this Second Distribution, while Authorized Reserve Fund Claimants will receive approximately 10% of their *pro rata* share of the Net Settlement Fund (as they already received approximately 90% during the Initial Distribution). Ultimately, after accounting for uncashed checks and authorized additional claims, Authorized Reserve Fund Claimants will have received 91% of their award as part of the Initial Distribution and 9% of their award as part of this Second Distribution. *See* Ex. 1, ¶ 5.

Dated: August 18, 2020

Respectfully submitted,

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